COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-544

COMMONWEALTH

vs.

AMADOR MEDINA.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The Commonwealth appeals from an order allowing the defendant's motion to suppress.[1] The defendant had argued successfully that his statements and any resulting evidence should have been suppressed because he was not provided with Miranda warnings and his statements were the product of custodial interrogation; for that reason, in his view, the physical evidence seized was fruit of the improperly obtained statements.[2] The motion judge allowed the defendant's motion to suppress on the basis that he was in custody when the statements

[1] A single justice of the Supreme Judicial Court allowed the Commonwealth's application for leave to pursue an interlocutory appeal and reported the matter to this court.

[2] The defendant was indicted on two counts of breaking and entering at night, G. L. c. 266, § 16; two counts of injuring a tomb, grave, or memorial, G. L. c. 272, § 73; nine counts of disinterring a dead body, G. L. c. 272, § 71; and two counts of conspiracy, G. L. c. 274, § 7.

were given because the police officers testified that, once the discussion was underway, they would not have permitted him to leave. We reverse.

Background. After an evidentiary hearing the motion judge made findings of facts; we summarize them here, reserving certain details for later discussion. The judge stated that her findings were based on the testimony of Detectives Bryan Gustis and Anthony Rykowski of the Hartford, Connecticut, Police Department, as well as the defendant's recorded statement given at the police station in Worcester.[3] She prefaced her findings with this statement: "[a]ny facts relayed at the hearing but not recited [in her memorandum of decision] were not credited by the Court." Both parties urge us to consider uncontested facts outside the findings. We accept this invitation because, "[w]hile a motion judge may decline to credit a witness's testimony, the judge may not make 'findings that [are] inconsistent with the uncontradicted testimony of the' witness, where 'there was no evidence to support those findings'"

[3] The parties state that the defendant did receive and then waived his Miranda rights before giving the recorded statement in Worcester. The record before us does not include the recording, or a transcript or a summary of the recorded statement, and neither party makes any separate argument concerning it. Further, the motion judge did not differentiate the statements made at the Hartford police station from the recorded statement. We presume that it was her intention to suppress both sets of statements.

(citation omitted). Commonwealth v. Cawthron, 479 Mass. 612, 621 (2018).

On December 4, 2015, the Hartford Police Department received a 911 complaint alleging that the caller had observed human remains at a residence at 245 Preston Street in that city.[4] Officer Gustis responded to the complaint first. He went to the house and asked the defendant if he could come in and speak with him. The defendant responded that Gustis could come into his apartment. Gustis asked the defendant if there were human remains in the house. The defendant answered that he did have "human bones for his religious rituals," and pointed out some of the remains which were in black plastic bags on his front porch. Gustis observed bones and dirt protruding from the bags.

The defendant discussed his religious practices with Gustis at some length. He stated he was a priest in the religion of Palo Mayombe (which he described as "the darker side of Santeria"), informing Gustis about the rituals and the role human remains played in the religion. Gustis observed religious fixtures throughout the dwelling and also saw five sets of human remains in trash bags.[5] The defendant stated he had purchased

[4] The 911 caller, who gave a first name, stated that he had been at the defendant's apartment having drinks, and that the defendant practices Santeria and had three human skulls on his porch.

[5] Gustis also saw bowls containing bones, sticks, and candles inside the apartment.

the human remains from a man in Massachusetts in May of 2015.[6] "Unprompted," the defendant also showed Gustis photographs on his cell phone of human remains still in tombs. The defendant was not arrested or handcuffed at any time in his house; he was very cordial. Gustis did not give the defendant Miranda warnings.

Hartford Police Sergeant Labbe arrived and spoke with the defendant and Gustis briefly and then left; Detectives Rykowski and Brando Flores arrived shortly afterwards. When Rykowski asked, the defendant again acknowledged that he had human remains in the apartment; he showed the detective the remains.[7] The defendant also showed Rykowski photos of open caskets with remains still in them; in the photos was a sign with the words, "Hope Cemetery." The defendant confirmed that Hope Cemetery is in Worcester. When Rykowski contacted the Worcester Police Department to inquire if any human remains were missing, someone confirmed that a mausoleum had been broken into in October of the same year and that remains of six people were missing.[8]

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[6] The defendant also commented that "a human skeleton costs about $3,000."

[7] The defendant also stated he had the remains of a small child.

[8] On October 9, 2015, an employee of Hope Cemetery in Worcester discovered a family mausoleum had been broken into. Hope Cemetery has several above-ground mausoleums which are kept chained shut and secured with locks. The employee notified the Worcester Police Department of the break-in.

Rykowski explained to the defendant that he was going to obtain a search warrant for the defendant's residence.

After approximately two and one-half hours at the defendant's apartment, the detectives asked him to come to the Hartford police station to make a statement. There was a dialogue between the defendant and the officers about how the defendant would get to the Hartford police station. The detectives gave the defendant the option to drive himself, but the defendant did not have an automobile, so Gustis transported him; he was not handcuffed or otherwise restrained during the trip or at the police station until he was formally arrested at the request of the Worcester Police Department sometime later.

Once at the police station, the defendant again spoke with the detectives at some length but, in the end, refused to sign the written statement memorializing their discussions.[9] The interview at the station lasted for approximately two hours; the defendant was there until approximately 11 P.M. No Miranda warnings were given to the defendant while he was at the station.

At the close of the interview, the Hartford Police Department received a request from the Worcester Police

[9] The defendant asked the officers if they had spoken to the Worcester Police Department and when the officers confirmed that they had, the defendant refused to sign his statement.

Department to detain the defendant as a fugitive from justice because they had probable cause for his arrest. In the meantime, the Hartford officers also had obtained a search warrant and searched the defendant's apartment. At some later time, the defendant gave a recorded statement to the Worcester officers. See note 3, supra.

Discussion. 1. Standard of review. The Commonwealth challenges the motion judge's determination that the defendant was in custody and therefore entitled to Miranda warnings. "In reviewing a ruling on a motion to suppress, we accept the judge's subsidiary findings of fact absent clear error 'but conduct an independent review of [her] ultimate findings and conclusions of law.'" Cawthron, 479 Mass. at 616, quoting Commonwealth v. Scott, 440 Mass. 642, 646 (2004). "The defendant has the burden of proving that interrogation was custodial." Commonwealth v. Burbine, 74 Mass. App. Ct. 148, 151 (2009). See Commonwealth v. Quinones, 95 Mass. App. Ct. 156, 161 (2019).

2. Custodial interrogation. "An interview is custodial where 'a reasonable person in the suspect's shoes would experience the environment in which the interrogation took place as coercive.'" Cawthron, 479 Mass. at 617, quoting Commonwealth v. Larkin, 429 Mass. 426, 432 (1999). Suspects are protected from police-dominated environments that would "subjugate the

individual to the will of his examiner." Cawthron, supra, quoting Miranda v. Arizona, 384 U.S. 436, 457 (1966). "Custody for purposes of Miranda attaches where there is a 'formal arrest' or a 'restraint of movement akin to formal arrest.'" Commonwealth v. Bermudez, 83 Mass. App. Ct. 46, 51 (2012), quoting California v. Beheler, 463 U.S. 1121, 1125 (1983).

We separately consider the four factors identified in Commonwealth v. Groome, 435 Mass. 201, 211-212 (2001), and applied in Cawthron, to determine whether the defendant was in custody when he made the statements at issue. Cawthron, 479 Mass. at 617-618, quoting Groome, 435 Mass. at 211-212. Rarely is a single factor conclusive. Cawthron, supra at 618. See Commonwealth v. Molina, 467 Mass. 65, 73 (2014). See also Commonwealth v. Sneed, 440 Mass. 216, 220 (2003) ("There is no specific formula for weighing the relevant factors").[10]

First, "the place of the interrogation" is considered. Groome, 435 Mass. at 211-212. Second, we consider "whether the officers have conveyed to the person being questioned any belief or opinion that that person is a suspect." Id. at 212. Third, we assess "the nature of the interrogation, including whether

[10] Whether the defendant was in custody is a question of Federal constitutional law. See, e.g., Commonwealth v. Morse, 427 Mass. 117, 123 (1998). Neither Massachusetts nor Connecticut affords defendants additional protections under their respective State constitutions.

the interview was aggressive or, instead, informal and influenced in its contours by the person being interviewed." Id. Fourth, "whether, at the time the incriminating statement was made, the person was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave, as evidenced by whether the interview terminated with an arrest" must be considered. Id.

a. Location of the interviews. In analyzing whether the location of an interview contributed to a coercive environment, we view the interrogation "from the point of view of the defendant." Cawthron, 479 Mass. at 618, quoting Commonwealth v. Conkey, 430 Mass. 139, 144 (1999), S.C., 443 Mass. 60 (2004) and 452 Mass. 1022 (2008). The initial interaction between the Hartford officers and the defendant occurred when Gustis responded to a call at the defendant's apartment. The first half of the questioning took place inside the defendant's own home with, at least initially, only one officer present. See Sneed, 440 Mass. at 221 (defendant voluntarily admitted questioners into familiar surroundings of her home).

After spending a significant period of time speaking with the defendant in his home, the police officers asked the defendant to come to the station to give a statement. They offered the defendant the option of transporting himself to the police station; he stated that he was unable to do so because he

did not own an automobile. Gustis then drove the defendant to the station. At no point was the defendant handcuffed, booked, or processed while he was at the Hartford police station. The officers also provided the defendant with dinner while he was at the station.

Viewing these facts objectively, we conclude the defendant was not in custody even when at the Hartford police station. It is well settled that the fact that some of the interview took place at the police station "is not dispositive of the custody inquiry." Molina, 467 Mass. at 73. See Commonwealth v. Sanchez, 476 Mass. 725, 736 (2017); Commonwealth v. Murphy, 442 Mass. 485, 493 (2004). The defendant was never placed under arrest, restrained with handcuffs, booked, or processed. The defendant also was provided with the option of transporting himself to the station. While that offer is not conclusive, it indicates that the defendant likely was going to be able to leave the station on his own after giving his statement. In fact, Rykowski testified that he intended to allow the defendant to leave the station after the interview -- until the Worcester Police Department contacted him and asked him to hold the defendant on a fugitive charge. We are persuaded that neither the exchange in the defendant's home nor the dialogue at the Hartford police station subjected him to such a coercive

atmosphere as would "subjugate [him] to the will of his examiner." Miranda, 384 U.S. at 457.

b. Whether the detectives conveyed a belief that the defendant was a suspect. "If the detectives had conveyed to the defendant[] that [he was a] suspect[], that might support a determination that the defendant[] w[as] in custody before [he] made the incriminating statements." Cawthron, 479 Mass. at 619. No such communication occurred here.

The officers who spoke to the defendant in his home testified they did not know whether the defendant had committed a crime or would even be charged. Rather, their focus was on proper disposal of the human remains. Gustis's initial conversation with the defendant was an inquiry about whether human remains were in fact located on the defendant's property. See Stansbury v. California, 511 U.S. 318, 325 (1994) (in determining whether suspect is in custody police officer's questions "affect[] how a reasonable person in that position would perceive his or her freedom to leave"). See also Cawthron, 479 Mass. at 620 (inquiry -- "what did you just buy?" -- from officer to defendant was preliminary investigation). In response to that initial inquiry about human remains on his property, the defendant voluntarily admitted he possessed human remains and described how he had obtained them, while also explaining their purpose in his religion. See

Cawthron, 479 Mass. at 619-620, quoting Commonwealth v. Callahan, 401 Mass. 627, 630 (1988) (explaining why defendant, who was not free to leave, was determined not to be in custody when officers asked him "what happened" as he was standing next to dead body).

Several hours into the interrogation and after he had spoken to the Worcester officers, Rykowski informed the defendant he would have to obtain a search warrant to recover the remains in the defendant's home in order to return them to their families. Contrast Commonwealth v. Simon, 456 Mass. 280, 287, cert. denied, 562 U.S. 874 (2010) (concluding defendant was in custody where officers began conversation by stating defendant was suspect in shooting). Rykowski testified that, even at that time, in his view, he had no basis to charge the defendant or to prove that the remains were the remains stolen from Hope Cemetery in Worcester.

The motion judge did not credit Gustis's or Rykowski's testimony that they did not know whether a crime had been committed and were unsure if the defendant was a suspect. She cited a Connecticut statute that makes it a felony to interfere with a burial ground. Regardless of whether the judge credited their testimony, there was no evidence in the record for her to find that they were aware a crime had been committed. The facts of this case are somewhat bizarre and the crime unusual.

Rykowski testified he had never seen anything like this before in his fourteen years of police service. To find either that the "average police officer" would immediately know a crime involving possession of human remains had been committed without forensic testing or other investigation or that Gustis or Rykowski in fact knew this is clearly erroneous.

More importantly, an officer's unexpressed opinion about whether an individual is a suspect is not dispositive on the issue of custody. See Cawthron, 479 Mass. at 620, citing Commonwealth v. Shine, 398 Mass. 641, 648-649 (1986) (concluding defendant was not in custody notwithstanding interrogating officer's uncommunicated intent to arrest defendant). See also Commonwealth v. Morse, 427 Mass. 117, 123-124 (1998), citing Stansbury, 511 U.S. at 323-324. Here, even though the defendant made incriminating statements while voluntarily explaining his religion, the fact that the statements were incriminating did not make them the product of custodial interrogation.

c. Tone of interviews. The third Groome factor requires analysis of the nature of the interaction between the defendant and the officers, specifically addressing whether the interaction was relaxed and conversational or aggressive and persistent. Groome, 435 Mass. at 212. If the record indicates the interaction was "aggressive," "persistent," or "harsh," it would support the conclusion that the defendant was subjected to

custodial interrogation. Cawthron, 479 Mass. at 621, citing Commonwealth v. Coleman, 49 Mass. App. Ct. 150, 155 (2000). The uncontroverted testimony from both Gustis and Rykowski was that the interaction took place without aggression or harsh words, and that the defendant was cooperative throughout, easily volunteering information, particularly about his religion. At both the defendant's home and later at the police station, there was nothing to indicate a coercive atmosphere. At no time was the defendant handcuffed or threatened with arrest; the officers did not brandish firearms or other weapons; they repeatedly described the defendant as cordial and expansive in describing his religious practices. In the absence of evidence beyond the officers' subjective suspicions that the defendant had committed a crime, we conclude the tone of these interviews was not confrontational.

d. Freedom to leave. We consider the final Groome factor -- whether the defendant was free to end the interrogation by asking for its termination or by simply walking away from the situation. Cawthron, 479 Mass. at 622. Both Gustis and Rykowski testified they would likely not have allowed the defendant to leave when they were questioning him. In concluding the defendant was in custody, the motion judge relied in part on the responses of the officers to her question whether the defendant was free to leave his home during the interview.

Both officers responded, "No." On the basis of these responses, the judge concluded, "So, by admission of the Commonwealth's own witnesses, the defendant was indeed in custody even at his own home during the questioning. Hence, the questioning of [the defendant] was a custodial interrogation." As previously discussed, the unexpressed opinion of an officer about whether the person being questioned is a suspect or is free to leave is not dispositive.

In fact, here, the record indicates the defendant did not try to leave, ask to do so, or show any interest in doing so at any point during the interviews. Moreover, Rykowski testified that, had the Worcester officers not contacted him to detain the defendant, he would have let the defendant leave the police station after his statement was given. In addition, Rykowski specifically told the defendant he was going to coordinate a ride home for him and that he should expect officers still to be at his home conducting a search when he got there. In fact, the defendant subsequently was detained in order for the Worcester officers to arrest him on a warrant they had obtained; however, that is not controlling either. Compare Cawthron, 479 Mass. at 622, quoting Commonwealth v. Bryant, 390 Mass. 729, 742 n.15 (1984) ("arrest after an incriminating statement has been obtained, by itself, [does not] label[] as custodial the interrogation that precedes the incriminating statement").

Determining whether an individual's freedom of movement is restrained is only the "first step" in the custody analysis. Howes v. Fields, 565 U.S. 499, 509 (2012). "Not all restraints on freedom of movement amount to custody for purposes of Miranda." Id. For example, the Court in Berkemer v. McCarty, 468 U.S. 420, 436 (1984), discussed degrees of restraint, stating that "few motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so." However, it is well established that traffic stops, without more, are noncustodial. Id. at 441. See Cawthron, 479 Mass. at 622-623.

Although the determination that an individual who is being interrogated is not free to leave may be highly probative, it also is not the determinative factor. Cawthron, 479 Mass. at 623 ("We balance the fact that the defendant[] w[as] not free to leave the interview, and w[as] arrested at its conclusion, against the other Groome factors"). In the present case, unlike in Simon, 456 Mass. at 287,[11] the defendant initially was faced with only one officer, and neither that officer nor the

[11] In Cawthron, 479 Mass. at 623, the court discussed its language in Simon, 456 Mass. at 287, that "[t]he critical question in determining whether an individual is in custody is whether a reasonable person in the individual's position would feel free to leave." The court explained that "[w]hile this may be a critical factor, today we clarify that it cannot be the determinative factor." Cawthron, 479 Mass. at 623.

responding detective accused him of committing a crime or informed him he was a suspect -- merely that they were investigating a report. A substantial portion of the defendant's questioning took place in his own home, where he moved throughout freely and was not restrained by handcuffs or in any way. No weapons were displayed -- apart from the one Gustis wore holstered; the defendant was offered the option of transporting himself to the police station; and the officers brought him dinner at the Hartford police station. These factors distinguish this case from Simon.

In sum, we conclude that the circumstances of the defendant's interviews are comparable to those in Sneed, 440 Mass. at 219-222, where the court reversed an order allowing a motion to suppress. In Sneed, a trooper and a civilian investigator visited the defendant, a lottery employee, at her house to inquire into missing lottery receipts. Id. at 217-218. When the defendant answered the door, the trooper identified himself and the defendant voluntarily let them into her home. Id. at 218. She was free to move around her home and was not restrained physically in any manner. Id. The judge apparently credited the defendant's testimony that the trooper's tone during questioning was "forceful." Id. In the present case, by contrast, the judge made no findings regarding force of questioning and the officers' testimony about the conversational

nature of the interviews was uncontroverted. The defendant in Sneed also was not provided with Miranda warnings but made various incriminating statements. Id. at 218-219. At the conclusion of the interview, the defendant in Sneed was not arrested but was later summonsed. Id. at 219. The court in Sneed reversed the allowance of the motion to suppress, concluding that "the interview was not custodial and, thus, Miranda warnings were not required." Id. at 222.

The aspect of the interrogation that gives us pause is its length. However, there is nothing in the record to suggest that the nature or tone of the interrogation changed during the time that the defendant was questioned. The testimony indicated that the interrogation at the police station was not harsh or confrontational. In addition, no one factor pertaining to the interrogation is determinative -- including its length. See Cawthron, 479 Mass. at 618; Molina, 467 Mass. at 73; Sneed, 440 Mass. at 220.

After considering all of the relevant factors, we conclude the defendant was not in custody when he was interrogated at his home or at the Hartford police station. The motion to suppress

should have been denied.[12]

Order allowing motion to suppress reversed.

By the Court (Wolohojian, Hanlon & Ditkoff, JJ.[13]),

Joseph F. Stanton

Clerk

Entered: June 17, 2019.

[12] The defendant also argues that his statements were not voluntary. The test for voluntariness is whether, under all the circumstances, "the will of the defendant was overborne to the extent that the statement was not the result of a free and voluntary act" (citation omitted). Commonwealth v. Tremblay, 460 Mass. 199, 207 (2011). There is nothing about the length of the interrogation that renders it involuntary. See Commonwealth v. Tolan, 453 Mass. 634, 643 (2009) ("length of the interview is merely one factor in the over-all voluntariness assessment"). There is nothing in the record to suggest that the defendant's statements were not voluntary. The motion judge mistakenly appears to have relied on her determination that Miranda warnings should have been given as conclusive of the issue of voluntariness.

[13] The panelists are listed in order of seniority.